

NTSB Order No. EA-5319

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 21<sup>st</sup> day of September, 2007

Respondents.

Dockets SE-18068  
and SE-18069

Respondents jointly appeal the oral initial decision of Administrative Law Judge William R. Mullins, issued in this consolidated emergency revocation proceeding on August 9, 2007.<sup>1</sup>

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By that decision, the law judge affirmed the Administrator's revocation orders against Respondent Exousia, Inc.'s (d/b/a Mavrik Aire, hereafter referred to as Mavrik Aire) operating certificate and Respondent Schweitzer's airman certificates for numerous violations of the Federal Aviation Regulations (FARs).<sup>2</sup>

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<sup>2</sup> The law judge's initial decision recites the Administrator's 52-paragraph series of allegations, and specific charges of FAR violations, against Respondent Mavrik Aire; and the 45-paragraph series of allegations, and specific charges of FAR violations, against Respondent Schweitzer. The details are too numerous to reproduce here. The charges against Respondent Mavrik Aire included: fraudulent or intentionally false entries on records required to be kept under Parts 43 and 61; operation of aircraft without complying with approved operating limitations; operating aircraft in a careless or reckless manner; operating an aircraft before it had been properly returned to service after maintenance or alteration; operating as an air carrier in violation of approved operating specifications and the requirements of Part 135; operating an aircraft in commercial service that was not listed on its operating certificate; utilizing the services of an airman in commercial service who did not hold an appropriate and current airman certificate and was not qualified; and using a person as a check airman when that person was not qualified to do so. The Administrator's allegations also stated that Respondent Mavrik Aire no longer meets the requirements to hold an operating certificate because: Mavrik Aire does not have qualified personnel currently serving in the chief pilot and maintenance director positions; does not have a current manual setting forth policies and procedures acceptable to the Administrator; and has not established and maintained an approved pilot training program. The charges against Respondent Schweitzer included: making fraudulent or intentionally false entries on records required to be kept under Parts 43 and 61; exercising the privileges of his commercial pilot certificate when he did not possess a valid second-class medical certificate; making a fraudulent or intentionally false statement on an application for medical certification; failing to surrender his medical certificate when requested to do so after its issuance was reversed by the Regional Flight Surgeon; operating an aircraft in a careless or reckless manner; operation of an aircraft without complying with approved operating limitations; operating an aircraft before it had been properly returned to service after maintenance or alteration; operating an aircraft in operations subject to Part 135 without having demonstrated knowledge and competency, as required, within the past 12 calendar months; and serving as a check airman when not authorized to do so.

We deny the appeal.

At the hearing, held in Anchorage, Alaska, on August 8 and 9, 2007, the Administrator presented the testimony of 16 witnesses and 41 exhibits.<sup>3</sup> Respondents, whose defense tactics at the hearing appear to have been focused primarily on cross-examination of the Administrator's witnesses, failed to offer evidence to rebut much of what the Administrator introduced

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<sup>3</sup> The Administrator's witnesses included: the FAA inspectors assigned to provide oversight of Mavrik Aire; the Regional Flight Surgeon for the Alaskan Region, who testified regarding Respondent Schweitzer's two applications for medical certification within a 9-day period; an FAA aerospace engineer from the Anchorage Aircraft Certification Office, who testified regarding the maximum certificated gross weight for Mavrik Aire's turbine DeHavilland DCH-3 Otter aircraft; a United States Fish and Wildlife Service law enforcement officer, who testified he observed Respondent Schweitzer operating the Mavrik Aire Otter to transport hunters (during a period when Mr. Schweitzer did not have a valid second-class medical certificate); several hunters who paid Mavrik Aire for transportation service to and from their unguided hunting trip, and observed Respondent Schweitzer operating the Mavrik Aire Otter (during a period when he did not have a valid second-class medical certificate) and Mavrik Aire's use of a second aircraft, a Piper Super Cub (that was not on Mavrik Aire's Part 135 operating certificate at the time); a contract mechanic, who testified about work he performed on Mavrik Aire's Otter (which was not documented in the aircraft's records provided by Mavrik Aire to FAA inspectors); the manager of the Selawik National Wildlife Refuge, who testified about her negotiations with Respondent Schweitzer that permitted Mavrik Aire to transport hunters into the refuge as a commercial carrier, and her subsequent observations of Mavrik Aire's Otter and the Super Cub (unauthorized under Mavrik Aire's operating specifications) making numerous trips into the refuge; a former Mavrik Aire pilot, Mark Carr, who testified that he made numerous flights for Mavrik Aire in which the Otter was substantially overloaded due to incorrect aircraft weight and balance information provided by Mr. Schweitzer, and that, when he brought this to Respondent Schweitzer's attention, Mr. Schweitzer was so angry and unresponsive that Carr abandoned the aircraft in the field; and other percipient witnesses to unauthorized commercial service provided by Mavrik Aire (utilizing Respondent Schweitzer as a pilot, during a period when he did not have a valid second class medical certificate).

during the case-in-chief.<sup>4</sup> Respondents presented only the testimony of Respondent Schweitzer,<sup>5</sup> as well as nine exhibits.<sup>6</sup> The law judge's decision summarizes the record evidence in considerable detail, and for purposes of our opinion we need not reiterate it here.

At the conclusion of the hearing, the law judge reviewed the Administrator's allegations in detail and then summarized the evidence. In explaining his evaluation of the evidence, the law judge emphasized his adverse impression of Respondent Schweitzer's credibility:

[T]o try to come into court, under oath, and suggest that ... [he] believed that [he was accurately and truthfully completing the August 9<sup>th</sup> application for medical certification] ... creates a serious credibility problem, not only for Mr. Schweitzer, but for Mavrik Aire, because Mr. Schweitzer is Mavrik Aire.... [T]hat testimony just undermines the rest of his positions that he

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<sup>4</sup> Respondents, who appear pro se on appeal, were represented at the hearing by Mike Spisak. Mr. Spisak, who is not an attorney, is a pilot for Mavrik Aire.

<sup>5</sup> Respondent called one other witness, out of order amidst the Administrator's case, but this witness provided little relevant testimony, and nothing of relevance to this stage of the proceedings.

<sup>6</sup> Respondent Schweitzer focused a considerable portion of his testimony on the allegations that he made intentionally false entries on his August 9, 2006 medical application, attempting to explain why his actions were done in good faith and not intentionally false. He also testified regarding his purported mistakes in calculating the proper weight and balance data for the Otter aircraft, provided sparse testimony about terms and conditions pertaining to several of the commercial air service contracts, claimed (contrary to several FAA witnesses) that he did receive a check ride authorizing him to fly single engine land aircraft under Part 135), and denied the testimony of pilot Carr that the Otter was operated contrary to its maximum authorized gross weight.

has taken under all of these allegations...  
 [Algain, it just destroys the credibility of  
 Mr. Schweitzer, who is the Respondent in one case  
 and is the controller and the operator of Mavrik  
 Aire in the other.

Initial Decision at 497-98. The law judge concluded that  
 evidence clearly demonstrated that Respondent Schweitzer  
 intentionally falsified his August 9 medical application.<sup>7</sup> The  
 law judge next explained that several allegations involving

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<sup>7</sup> The facts pertaining to Respondent Schweitzer's medical applications are not in dispute. On August 1, 2006, he visited an aviation medical examiner (AME) and submitted an application for a second-class medical certificate. In filling out the form, in response to Question 16 ("Date of Last FAA Medical Application"), he correctly reported the date of his last medical as "07-01-05," and answered "yes" to Question 18(v) which asks about the applicant's history of alcohol-related motor vehicle actions. In the remarks section, Respondent Schweitzer explained that on August 24, 2006, his drivers license was suspended for refusal to submit to a sobriety test. See Exh. A-12. The AME's office performed the clinical observations associated with the certification, but the AME informed Mr. Schweitzer that issuance of the medical certificate would have to be deferred in light of the reported history of refusal to submit to the sobriety test. Id. at p. 2. Respondent had a telephone conversation with the Regional Flight Surgeon, in which the procedure acceptable to the FAA for demonstrating medical qualification was discussed. Next, contrary to the procedures discussed with the Regional Flight Surgeon, Respondent Schweitzer visited a different AME on August 9 and submitted another application for a second-class medical certificate. On the August 9 application, however, in response to Question 16 ("Date of Last FAA Medical Application"), respondent did not report the application he made 9 days earlier which was deferred by the AME, and, instead, he reported "07-01-05." Respondent again responded "yes" to Question 18(v) regarding alcohol-related motor vehicle actions, but this time in the remarks section wrote "already reported." See Exhs. A-14 and A-16. Respondent was issued a second-class medical certificate by the new AME, who was unaware of Respondent Schweitzer's recent drivers license suspension for his refusal to submit to a sobriety test. The Regional Flight Surgeon wrote to respondent on September 20, 2006, upon learning of the above information, and informed him that, on the basis of the two applications submitted in August 2006, his application for medical certification was denied, and requested that he return the unexpired medical certificate issued by the AME. See Exh. A-17.

individuals peripheral to Mavrik Aire or Respondent Schweitzer were not proven by the Administrator, and he dismissed those allegations.<sup>8</sup> Initial Decision at 498-99. Finally, in explaining his ultimate decision, the law judge returned to his views regarding respondents' sole witness, Respondent Schweitzer. The law judge characterized the credibility of respondents' sole substantive witness as totally "destroyed" as to "anything ... about these allegations." Id. Accordingly, the law judge found that the preponderance of the reliable, probative evidence supported all other allegations against both Respondent Mavrik Aire and Respondent Schweitzer and affirmed both orders of revocation.

On appeal, respondents have filed a 4-page appeal brief, wherein they essentially argue: (1) their disagreement with the law judge's conclusion that respondent intentionally falsified his medical application; (2) that the law judge "erred in stating that Craig Schweitzer is Mavrik Aire"; (3) that the law judge erred in affirming all allegations against both respondents without making specific findings about each allegation in the Administrator's complaint; and (4) that the law judge based his decision solely on the issue of credibility despite the fact that the Administrator's orders were premised upon her allegations that respondents lacked the qualifications necessary to hold

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<sup>8</sup> The Administrator does not appeal the law judge's dismissal of those allegations.

their certificates. Respondents' Br. at 1-4.<sup>9</sup> The Administrator urges us to uphold the law judge's decision, and avers that, "a preponderance of the creditable evidence does establish each of the regulatory violations affirmed by the law judge." Administrator's Br. at 20.

First, our prior decisions make clear that we defer to the credibility determinations of our law judges, who are in the position of observing live testimony and the demeanor of witnesses, unless shown to be clearly erroneous. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1986). Respondents' vague assertions about how they would have evaluated Respondent Schweitzer's testimony do not demonstrate that the law judge's credibility determinations or assessment of the evidence were clearly erroneous. For example, Question 16 on the FAA medical application form explicitly seeks the date of the last FAA

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<sup>9</sup> Respondents also appear to argue that the law judge erred in not permitting them to introduce certain records at the hearing. Respondents, however, do not identify with specificity the documents at issue, or explain why in their view they were erroneously excluded. Nonetheless, we have reviewed the entire transcript of these proceedings, and we discern no error in any of the law judge's decisions regarding the relevance or admissibility of evidence proffered by respondents. Indeed, in our view, both the law judge and the Administrator's counsel exercised patience and granted respondents' representative significant procedural latitude throughout the hearing. In any event, respondents have not shown that the law judge abused his discretion in exercising his legitimate control over the admissibility of relevant evidence, scope of questioning, or confining argument to issues he considered germane to the complaint. In this regard, of course, determinations of relevance and admissibility of proffered evidence rest in the sound discretion of the law judge. Administrator v. Santana, NTSB Order No. EA-5152 at 3 (2005); see also 49 C.F.R. § 821.35(b).

medical "application." Respondent Schweitzer's claim to have relied instead on the supplementary instructions (which utilize the phrase "month and year of last FAA medical examination") is inherently not credible under the circumstances. First, there is ample evidence of Respondent Schweitzer's motive to obfuscate the information he previously reported 9 days earlier in his August 1 application that resulted in a deferred decision regarding medical qualification due to his recent alcohol-related motor vehicle history.<sup>10</sup> Second, respondent's collateral assertion that he did not consider the August 1 visit to the AME to constitute an "FAA medical evaluation" is simply not supportable, where, as here, during the visit respondent's urine was collected, his vision was tested, blood pressure and pulse were measured, and other observations about respondent's condition were recorded. See Exh. A-12 at p. 2. In short, respondents have not demonstrated that the law judge committed reversible error in making his credibility determinations.

We have held that, in the context of applications for medical certificates, an incorrect answer on an application is *prima facie* proof of intentional falsification. Administrator v. Manin, NTSB Order No. EA-4303 at 3 (1994). The required elements of proof in an intentional falsification case are: (1) a false representation; (2) in reference to a material fact; and (3) made

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<sup>10</sup> Intent to deceive is not an element required to prove an intentional falsification charge, but, rather, it is required only to demonstrate a fraud charge. See, e.g., Administrator v. McGonegal, NTSB Order No. EA-5224 at 3 (2006).

with knowledge of falsity. See, e.g., Administrator v. Croston, NTSB Order No. EA-5265 at 2 (2007). The credited evidence clearly supports the Administrator's allegation, and the law judge's finding, that Respondent Schweitzer intentionally falsified his August 9 medical application. In light of the record as a whole, and the law judge's refusal to accept Respondent Schweitzer's exculpatory claims, Respondent Schweitzer's answer to Question 16 that his last FAA medical application was in 2005, vice his more recent application on August 1, 2006, was knowingly false. And, of course, we have previously held that all answers on an FAA medical application are material. See Administrator v. Reynolds, NTSB Order No. EA-5135 at 3 (2005). We note, as the law judge correctly observed, that this serious violation is, standing alone, a sufficient basis to revoke all airman certificates held by Respondent Schweitzer. See, e.g., Croston, supra at 2 (2007).

We find no merit in respondents' assertion that there was no basis for the law judge's conclusion that Mavrik Aire is, essentially, the corporate "alter ego" of Respondent Schweitzer. First, the only evidence on the matter was presented by the Administrator's witnesses, and that evidence indicates that Respondent Schweitzer is listed in official State records as Mavrik Aire's sole director. The record also clearly establishes that Respondent Schweitzer was running Mavrik Aire's operations, and was the person who sought and negotiated the Mavrik Aire contracts at issue in the hearing. He is listed on the Mavrik

Aire operations specifications as the director of operations, and, until the FAA recently rescinded the designation, Mr. Schweitzer was also listed on Mavrik Aire's operations specifications as chief pilot.<sup>11</sup> Conversely, respondents presented no evidence, nor do we discern any, that indicates "anyone else was managing, directing, or even influencing the operations of Mavrik Aire." Administrator's Br. at 18. In short, respondents demonstrate no error in the law judge's conclusion. It must be noted, however, that the import of the law judge's conclusion was not to attribute Respondent Schweitzer's transgressions to Mavrik Aire, but, rather, an observation that Mavrik Aire's entire defense was founded upon the discredited testimony of Respondent Schweitzer. As we explain below, there was ample evidence in the record to support the law judge's affirmation of the revocation orders due to both respondents' demonstrated lack of qualification to hold their respective certificates.

We also find respondents' cursory argument that the law judge "erred in ruling that all of the regulatory allegations were established based on [a] preponderance of the evidence ... when [he] refused to rule on the regulations," to be unpersuasive. Respondent's Br. at 3. We have previously addressed such claims made under similar circumstances. See Administrator v. Air San Juan and Marsden, NTSB Order No. EA-3567

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<sup>11</sup> At the time of the hearing, Mavrik Aire had not filled the chief pilot position with a person deemed suitable by the Administrator.

at 2 (1992) ("[i]f respondents believe that the record does not support the law judge's finding as it relates to particular counts, it is their right to raise those matters on appeal by way of specific argument and citation showing the law judge's finding to be either legal error or unsupported in the record").<sup>12</sup>

Respondents offer no specific argument, or any citations to the record evidence or regulatory standards, to support their general inference that the law judge improperly affirmed the Administrator's charges.

Finally, contrary to respondents' assertions, the record clearly supports affirmation of the revocation orders against both Mavrik Aire and Respondent Schweitzer. The allegations in the complaints, and the credited evidence presented at the hearing, demonstrate a striking willingness to ignore FAA regulatory requirements. As we stated in Administrator v. Clair Aero, Inc., NTSB Order No. EA-5181 at 5 (2005), a "demonstrated willingness to disregard the laws and regulations governing commercial passenger operations warrants revocation of their respective certificates." Here, for example, we have evidence that Mavrik Aire utilized an aircraft, the Piper Super Cub, in commercial service when that aircraft was not approved under its operating certificate. Mavrik Aire knowingly utilized pilots, including Respondent Schweitzer, that it knew were not currently

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<sup>12</sup> Notwithstanding our finding that respondents have not carried their burden to demonstrate errors, we prefer our law judges make more specific findings of fact and law than was done in this proceeding. See 14 C.F.R. § 821.42(b).

qualified to conduct operations under its certificate. And Mavrik Aire utilized Respondent Schweitzer, when Respondent Schweitzer did not possess a valid second-class medical certificate, to conduct commercial operations under its certificate. We note, too, our view that Mavrik Aire also demonstrated a non-compliance disposition when, in responding to the FAA's expressed concerns about the vacant position of chief pilot, it responded, through its representative Schweitzer, on April 13, 2007, in part, as follows:

I received your letter in regard to our letter ... naming Kevin Hufford as Chief Pilot. My apologies if there is some confusion on your end, but we have named Kevin Hufford as our Chief Pilot.

\* \* \*

A note to clarify for you since you haven't worked for the FAA at any great lengths yet, [Mavrik Aire] follows the Federal Aviation Act of 1958 as amended. You, on the other hand, may have to go by your handbook, 8400.10 on how you do your job. I would suggest that you don't mix them up because we are bound by the "Act" not your handbook. If you would like to submit your handbook to the federal registry to bring it into law then feel free to do so but until that time that is not our rule book. Make the changes and fax me a copy...

See Exhs. A-36 through A-40. As for Respondent Schweitzer, the Administrator showed that he intentionally falsified his FAA medical application. In sum, we find sufficient basis to affirm the Administrator's revocation orders.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondents' appeal is denied; and
2. The law judge's decision, affirming the Administrator's emergency orders of revocation, is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.